

31 MAR 2003



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In re Application of	:	
Alan EBRINGER	:	DECISION ON PETITION
Application No.: 09/269,607	:	
PCT No.: PCT/GB97/02667	:	UNDER 37 CFR 1.182
Int. Filing Date: 29 September 1997	:	
Priority Date: 27 September 1996	:	
Attorney Docket No.:78104.038	:	
For: DIAGNOSIS OF SPONGIFORM DISEASE	:	

This decision is in response to a PETITION UNDER 37 CFR 1.182 TO REPLACE DEFECTIVE DOCUMENTS filed by facsimile on 20 February 2003 which requests that the originally filed transmittal letter and declaration be replaced with newly submitted documents which correctly identify the international application number.

### **BACKGROUND**

On 29 September 1997, applicant filed international application PCT/GB97/02667, which claimed priority of an earlier application filed 27 September 1996. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty month period for paying the basic national fee in the United States of America expired at midnight on 29 March 1999 (27 March 1999 being a Saturday).

On 26 March 1999, applicant filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, *inter alia*, the requisite basic national fee. No oath or declaration accompanied the Transmittal Letter. The transmittal letter indicating a filing under 35 U.S.C. 371 of international application PCT/GB97/02267.

On 26 May 1999, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Missing Requirements Under 35 U.S.C. 371 In The United States Designated/Elected Office (DO/EO/US)" (Form PCT/DO/EO/905). The Notification indicated

that an oath or declaration in compliance with 37 C.F.R. 1.497(a) and (b) must be submitted within one month of its 26 May 1999 date of mailing or by 31 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application. The Notification further indicated that the surcharge under 37 C.F.R. 1.492(e) was required.

On 26 July 1999, applicant filed an executed declaration and the surcharge under 37 CFR 1.492(e). The declaration identified the international application as PCT/GB97/02267.

On 05 August 1999, the DO/EO/US mailed a "Notification Of Acceptance Of Application Under 35 U.S.C. 371 And 37 CFR 1.494 Or 1.495" (Form PCT/DO/EO/903) indicating a date under 35 U.S.C. 371 of 26 July 1999.

On 20 February 2003, applicant submitted the instant petition requesting that a supplemental declaration and transmittal letter, each of which now correctly identifies the international application number, be accepted.

### **DISCUSSION**

A review of the file clearly indicates that the transmittal letter filed 26 March 1999 and the declaration filed 26 July 1999 incorrectly identify the international application number as PCT/GB97/02267, as opposed to PCT/GB97/02667. Both the transmittal letter and the declaration indicate the title of the invention as "Diagnosis of Spongiform Disease", the international filing date as 29 September 1997, and the applicant as Alan Ebringer, all of which is consistent with international application number PCT/GB97/02667. Further, the submission was accompanied by a copy of international application number PCT/GB97/02667.

In view of such, both the transmittal letter and the declaration were defective and the Notification Of Acceptance was mailed in error.

However, applicant's petition under 37 CFR 1.182 and the submission of a corrected transmittal letter and declaration are effective to correct the defects.

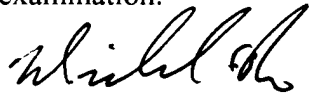
### **CONCLUSION**

For the reasons above, the petition under 37 CFR 1.182 is **GRANTED**.

In view of the above, the "Notification Of Acceptance Of Application Under 35 U.S.C. 371 And 37 CFR 1.494 Or 1.495" (Form PCT/DO/EO/903) mailed 05 August 1999 is hereby **VACATED**.

The application is being returned to the DO/EO/US for processing of the executed declaration filed 20 February 2003 including the issuance of a corrected Form PCT/DO/EO/903 indicating a date under 35 U.S.C. 371 of 20 February 2003.

Thereafter, the application will be returned to Technology Center 1600 for continued examination.



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